



**Order under Section 57  
Residential Tenancies Act, 2006**

**Citation:** Lalonde v Merriman, 2024 ONLTB 21608

**Date:** 2024-04-03

**File Number:** LTB-T-061512-23

**In the matter of:** 5, 37 John Street  
Brockville ON K6V5A6

**Between:** Ray-Ray Lalonde

Former  
Tenant

**And**

Kathleen Merriman

Landlord

Ray-Ray Lalonde (the 'Tenant') applied for an order determining that Kathleen Merriman (the 'Landlord') gave a notice of termination in bad faith.

This application was heard by videoconference on January 11, 2024.

The Tenant, the Landlord's legal representative, Jesse Valkenier, and the Landlord's property manager, Terry Greenwood (T.G.) attended the hearing.

**Determinations:**

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay to the Tenant a total of \$6,085.00 which represents:

- \$1,032.00 for rent differential;
- \$5,000.00 for general compensation; and,
- \$53.00 for the cost of filing the application.

### *Evidence and Analysis*

2. This application is brought pursuant to section 57(1)(c) of the *Residential Tenancies Act, 2006* (the 'Act') which reads as follows:

The Board may make an order described in subsection (3) if, on application by a former tenant of a rental unit, the Board determines that,

...

(c) the landlord gave a notice of termination under section 50 in bad faith, the former tenant vacated the rental unit as a result of the notice or as a result of an application to or order made by the Board based on the notice, and the landlord did not demolish, convert, or repair or renovate the rental unit within a reasonable amount of time after the former tenant vacated the rental unit.

3. The parties agree on the following facts:

- On or about November 20, 2022, the Tenant was served with an N13 notice of termination (the 'notice') indicating that the Landlord intended to demolish the rental unit. The termination date on the notice was March 31, 2023.
- That following service of the notice, discussions between the parties resulted in the Landlord and Tenant signing an N11 agreement to end the tenancy.
- That the addendum to the N11 agreement states in consideration for signing the N11 form, the Landlord agreed to waive the rental fees for December 2022, and January, February, and March 2023. The N11 agreement was signed by the Landlord and the Tenant on December 5, 2022.
- That the Tenant vacated the rental unit on March 31, 2023.
- That the building containing the rental unit was sold on April 30, 2023.
- That the building containing the rental unit has not been demolished as of the date of the hearing.

4. The Tenant testified that he was somewhat surprised when he received the notice but that he knew the building was not in good shape as it was over 100 years old so it made sense

to him that the building may need to be demolished. The Tenant testified that he had no reason to question the notice and stated "if that was the case, there is not much you can do about that".

5. The Tenant testified that at the time the notice was served there was no mention that the Landlord intended to sell the building. The Tenant testified that he wasn't aware the building had sold until he saw the property on a Remax listing in July 2023.
6. The Tenant testified that his understanding of the N11 agreement was that the Landlord was giving him compensation for losing his home and to ensure there was vacancy of the building for the intended demolition. The Tenant testified that he didn't question the Landlord's motives as he had no reason to think otherwise.
7. T.G. testified that he has worked as the property manager for the Landlord for approximately 1 and a half years. T.G testified that the Tenant was served the N13 notice because the building was being sold.
8. The Landlord's legal representative submitted a copy of the Agreement of Purchase and Sale ("APS") between the Landlord and a buyer dated September 1, 2022. The fourth paragraph of Schedule A to this APS states the following:

The Buyer hereby authorizes and directs the Seller, and the Seller agrees, when this agreement becomes unconditional, to give to the tenant(s) the requisite notices under the Residential Tenancies Act, 2006, SO2006, c17, as amended from time to time, requiring vacant possession of the property for use by the Buyer or the Buyer's immediate family, effective as of the 11:59 PM day of November 09, 2022, and the Seller agrees to deliver copies of the requisite notices to the Buyer immediately after service of the notices upon the tenant, with all costs and expenses attributable thereto to be paid by the Seller (Seller/Buyer). The Buyer may extend the closing date until such time(s) the property is completely vacant and clear of all Clutter, Debris, Personal Items.

9. T.G. testified the first sale did not go through because the buyer wanted a \$30,000.00 discount on the agreed price which the Landlord would not agree to. T.G. further testified that the building was relisted for sale and was sold to a new buyer a short time later. The APS with the new buyer was submitted and is dated April 30, 2023. Notably there is no term in the new APS that speaks of requiring vacant possession of the property from existing tenants.
10. T.G. testified that his understanding of the N11 agreement was for the Tenant to be out of the rental until by March 31, 2023.
11. Based on the evidence and testimony before me, I find on a balance of probabilities that the Landlord served the N13 notice in bad faith. I say this for the following reasons.

12. The Landlord already had an agreement to sell the building to a buyer when the Tenant was served with the N13 notice. Rather than serving a notice of termination under section 49(1) of the Act (the purchaser requires the rental unit), the Landlord served a N13 advising the Tenant the building was going to be demolished. To this date the building has still not been demolished. There was no evidence before me to suggest that the Landlord ever had any intention to demolish the building containing the rental unit. The Landlord's property manager's understating of why the notice was served was because the building was being sold. I find it is more likely than not that the N13 was an easier route for the Landlord to obtain vacant possession as was required by the APS, and as such the notice was served in bad faith.
13. The Landlord's legal representative submits that the Tenant accepted 4 months free rent as consideration for signing an agreement to vacate the unit and signed an N11 form and that the Tenant moved out because of this agreement and not in accordance with the N13.
14. I do not accept the Landlord's legal representative's position on this point. A tenant cannot file an application under s. 57(1)(c) of the Act until after a landlord has failed to demolish, convert or repair or renovate the rental unit within a reasonable time after the former tenant vacated the rental unit. Thus, the Landlord's failure to demolish and the Tenant's cause of action did not arise until after December 5, 2022, the date the Landlord and the Tenant signed the N11 form. Moreover, I accept the Tenant's evidence that he only signed the N11 because the Landlord indicated they intended to demolish the building, and that they accepted compensation in return for giving vacant possession. In other words, I accept that there was no meeting of the minds between the parties that the agreement meant the Landlord no longer intended to demolish and that they were free to do whatever they wished with the building. Had the Landlord and the Tenant intended their agreement to prevent the Tenant from bringing a T5 application in the future should the Landlord not demolish the property after the Tenant vacated, this should have been specifically reflected in the addendum to the agreement.

### *Remedies*

15. The next issue before me is the quantum of remedies to award the Tenant. The remedies the Tenant is requesting in the application are: rent differential, general compensation and that the Landlord pay a fine to the Landlord and Tenant Board.

#### Rent Differential

16. The Tenant testified that he pays \$86.00 per month more than his previous rent. The Tenant testified that his previous rental unit was approximately 700 square feet with one bedroom and that at the previous unit the Tenant had use of a garage where he ran a small engine repair business. The Tenant submitted a copy of the lease agreement for the former rental unit which indicates that he pays rent for the use of a "23' X 27' shop". The Tenant stated his small business generated approximately \$1,000.00 per month of income.

17. The Tenant testified his new unit is approximately 780 square feet and has two bedrooms; however, the Tenant no longer has a garage where he can store his small engine repair tools and equipment and as a result, the Tenant testified he no longer has his small engine repair business and he had to get rid of a lot of stock and inventory. The Tenant further testified that he has not replaced that income with any other income and now does without the additional \$1,000.00 his small engine repair business generated. The Tenant further testified that he wasn't able to find a place until the last minute and moved into his new unit within a week of finding it. The Tenant stated that the new unit was not completely renovated and ready for a tenant but that his new landlord allowed him to move in anyway. The Tenant testified that the new unit did not have a kitchen or a bathtub for the first two months he lived there.
18. In considering a rent abatement, the Board must consider whether the rental units are comparable, although they need not be exact. The Tenant's new unit is slightly larger with an additional bedroom; however, the Tenant lost the use of an additional garage space where he could run his small business. I find the loss of this additional space makes the units comparable despite the additional 80 square feet of space and an additional bedroom. The Tenant did not submit rent receipts or his new lease agreement; however, the Landlord did not dispute the Tenant pays this amount and I have no reason to disbelieve the Tenant's testimony. Therefore, the Tenant is entitled to the rent differential of \$86.00 per month for one year or \$1,032.00.

#### General Compensation

19. The Tenant is requesting \$9,768.00 in general compensation. He quantified this amount by considering what he paid in rent for one full year and considering his pain and suffering, his shift in financial burden, and the impact on his self employment.
20. Section 57(3)(1.1) of the *Act* sets out the orders that can be issued when the Board determines that a former tenant was served a notice under section 50 in bad faith and states the following:

An order that the landlord pay a specified sum to the former tenant as general compensation in an amount not exceeding the equivalent of 12 months of the last rent charged to the former tenant. An order under this paragraph may be made regardless of whether the former tenant has incurred any actual expenses or whether an order is made under paragraph 2.

21. The Tenant testified about the impact the bad faith eviction had on him. The Tenant testified that he had lived in the rental unit for 11 years, that he had no plans to move, and that he was very upset that he had to leave his home and shut down his established small business. The Tenant testified it was difficult to find a rental unit that he and his wife could afford and that he was not able to find a suitable rental unit until the last moment. Additionally, the rental unit the Tenant did find was not fully ready and the Tenant had to live without a kitchen and a bathtub for two months.

22. The Tenant's testimony about the impact the eviction had on him was detailed and consistent and I have no reason to disbelieve him. I am satisfied that he experienced emotional distress because of the Landlord's actions. I also find that the Tenant was impacted by the loss of his small engine repair business which he ran out of the garage he paid to use at the previous rental unit. Based on the evidence before me, taking into account the loss of the Tenant's business, and my knowledge of similar cases, I find that an award of \$5,000.00 is sufficient to compensate the Tenant for the emotional hardship he suffered as a result of the Landlord's bad faith termination of his tenancy.

Administrative Fine

23. The Board's Guideline 16 provides that the purpose of a fine is to encourage compliance with the Act and to deter landlords from engaging in similar activities in the future. It goes on to say, "this remedy is most appropriate in cases where the landlord has shown a blatant disregard for the Act and other remedies will not provide adequate deterrence and compliance."

24. I find that the actions of the Landlord in this case do demonstrate a blatant disregard for the Act. However, I find that the significant general compensation I have awarded to the Tenant should provide adequate deterrence from engaging in similar acts. As such, no fine shall be ordered.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$6,085.00. This amount represents:
  - \$1,032.00 for increased rent the Tenant has incurred and will incur for the one-year period from April 1, 2023 to March 31, 2024.
  - \$5,000.00 for general compensation.
  - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by June 30, 2024 .
3. If the Landlord does not pay the Tenant the full amount owing by June 30, 2024, the Landlord will owe interest. This will be simple interest calculated from July 1, 2024 at 7.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

**April 3, 2024**  
**Date Issued**

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Melissa Anjema  
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.